IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: O R D E R ::

D.B. CIVIL REVIEW PETITION NO.113/1994
IN
D.B. CIVIL WRIT PETITION NO.918/1988

Chittarlal
Vs.
State of Rajasthan & Ors.

Date of Order :: 4th September, 2006

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE AJAY RASTOGI
::

Shri K.K. Mehrishi, for the petitioner.
Shri B.L. Awasthi Addl.G.A. for the State.

*****

BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)

By this petition the petitioner seeks review of the order of the Division Bench dated 2.11.1988 in D.B. Civil Writ Petition no.918/1988. The petition was

filed in the light of the order of the Supreme Court in S.L.P. nos.11392-94/1987. The order runs as under :-

> "The learned counsel for the petitioner states that the petitioner has raised before the High Court the point that the classification of the land should be determined with reference to the character of the land as entered in the revenue record on 1st April, 1966. The High Court, however, unfortunately not discussed the said point. If the petitioner had raised the point in question, he will be at liberty to approach the High Court by way of a review. Subject to the above directions, the special leave petition is allowed to be withdrawn. The review application, if the petitioner is advised to file one should be filed within 4 weeks from today. There will be stay of the recovery of that possession of the land for 4 weeks from today. The petitioner may apply to the High Court for continuation of the stay with the review application which may be decided by the High Court on merits."

The dispute relates to determination of ceiling area under Chapter III B of the Rajasthan Tenancy Act, 1955. The case of the petitioner is that in the proceeding initiated for determination of ceiling area, the competent authority, namely, S.D.O., Kota vide order dated 31.3.1975 held that there was no excess land and accordingly dropped the proceeding. The proceeding however was reopened on 24.7.1980 in terms of Section 15(2) of the Rajasthan Imposition of

Ceiling on Agricultural Holdings Act 1973.

It is relevant to mention here that Chapter III B of the Rajasthan Tenancy Act was replaced by the Rajasthan Imposition of Ceiling on Agricultural Holdings Act with effect from 1.1.1973. Section 15 of the said Act confers power on the State Government to re-open a decided case, and determine the ceiling area afresh within three years of commencement of the Act. While sub-section (1) of Section 15 deals with re-opening of cases decided under the new Act, sub-section (2) relates to cases decided under the old Act. The case decided under the new Act and re-opened under sub-section (1) has to be dealt with afresh in accordance with the provisions of the new Act; the case decided under the old Act and re-opened under sub-section (2), has to be dealt with afresh in accordance with the provisions of the old Act.

The petitioner raised dispute, among other things, about classification/category of the lands. The Division Bench went into the consequences of reopening and the applicability of the old or the new

Act as well as size of the family, but it did not advert to the dispute about classification. The orders of the authorities under the Act holding 12.23 standard acres of land as surplus were upheld. By order dated 13.7.1981, it may be stated, the Additional Collector, Kota found that the lands were situate in Chambal Command Area and accordingly concluded that the petitioner held 47.53 standard acres. The size of petitioner's family on the appointed day i.e. 1.4.1966 being six, he was held entitled to retain 35 standard acres, the remaining 12.53 standard acres land was declared surplus. The petitioner preferred appeal before the Board of Revenue but without success. He then came to this Court in the connected writ petition i.e. D.B. Civil Writ Petition no.918/1988.

As seen above, the Supreme Court in its order dated 18.2.1994 observed that if the petitioner had raised the point regarding classification, he may seek review of the order of this Court, and that is how the present petition came to be filed.

Shri K.K. Mehrishi learned counsel for the petitioner submitted that both the Additional Collector and the Board of Revenue committed error in recording finding that the lands in question were situated in Chambal Command Area and on that basis calculating the standard acres and the petitioner's entitlement. The dispute regarding classification/category of land – whether they are irrigated or non-irrigated - or their situation – in command area or non-command area - involves questions of fact which cannot be effectively gone into and decided by this Court in the present proceeding. The appropriate course would be to remit the case back to the Additional Collector for fresh consideration.

We would however like to observe that the proceeding in question having been initiated under the old Act, the entitlement of the petitioner has to be determined in accordance with the provisions of the old Act - as specifically provided under sub-section (2) of Section 15 of the new Act. The dispute regarding classification/category of the land naturally therefore has to be decided in accordance with the provisions of the old Act. Unlike Section 1

(3) of the new Act in terms of which the Act came into effect with effect from 1.1.1973, the old Act did not mention the date of enforcement. Section 30-E mentioned that “from a date notified by the State Government” in this behalf, no person shall continue to hold or retain in his possession land in excess of the ceiling area applicable to him. In terms of the proviso, different dates could be notified for different areas of the State. The determination of the ceiling area therefore would have to be made with reference to the date of enforcement of the Act in a particular area or in any case, not later than the date of initiation of the proceeding. Any change in the geography of the land subsequent thereto cannot be taken into account. In other words, if a land was non-irrigated, that is to say, situate in non-command area, it cannot be treated as irrigated by reason of subsequent developments.

With the above observations and clarification, the matter is sent back to the Additional Collector, Kota for decision on the point of classification/category of land. Needless to say that the determination of ceiling area/excess land

will abide by the result of the enquiry and to that extent notification declaring the petitioner’s excess lands may be modified.

The review petition thus stands disposed of.

[AJAY RASTOGI], J. **[S.N. JHA], CJ.**

Skant/-